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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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**KIERAN KELLY,**

**Plaintiff,**

**-against-**

**TANVIR CHOUDHRI M.D., ET AL.,**

**Defendants.**  
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**18-cv-12214 (ALC) (OTW)**

**OPINION & ORDER**

**ANDREW L. CARTER, JR., District Judge:**

Mr. Kieran Kelly (hereinafter, “Plaintiff” or “Mr. Kelly”) commenced this lawsuit against Tanvir Choudhri M.D. and Mount Sinai Health Systems, Inc. (collectively, “Defendants”) in December 2018 alleging claims for medical negligence. ECF No. 1. Defendants answered Plaintiff’s Complaint on March 18, 2019, ECF Nos. 10-11, and the case was subsequently referred to Magistrate Judge Ona T. Wang for General Pretrial, ECF No. 12. On May 24, 2021, Judge Wang issued a Report and Recommendation (hereinafter, “Report”) recommending the action be dismissed with prejudice for failure to prosecute under Federal Rule of Civil Procedure (“Rule”) 41(b). ECF No. 105. Mr. Kelly filed no objections to Judge Wang’s Report.

**STANDARD OF REVIEW**

A district judge may designate a magistrate judge to submit proposed findings of fact and recommendations for the disposition of a case. 28 U.S.C. §§ 636(b)(1)(A)-(C). Following the filing of a report and recommendation, “any party may serve and file written objections to such proposed findings and recommendations” within fourteen (14) days of being served with a copy of the report and recommendation. 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(2). A district

judge must undertake a *de novo* review of any portion of a magistrate judge's report that has been properly objected to. Fed. R. Civ. P. 72(b)(3). In the absence of objections, however, the Second Circuit has "adopted the rule that failure to object timely to a magistrate judge's report may operate as a waiver of any further judicial review of the decision, as long as the parties receive clear notice of the consequences of their failure to object." *Graves v. Corr. Med. Serv.*, 667 F. App'x 18, 19 (2d Cir. 2016) (summary order) (internal quotation marks and citation omitted). In reviewing a report and recommendation free from objections, the district court reviews the report for clear error. *See Wilds v. United Parcel Serv., Inc.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003); *see also Patterson v. Rock*, No. 09-cv-1038, 2012 WL 3245489, at \*1 (S.D.N.Y. Aug. 3, 2012).

### **DISCUSSION**

In the Report, Judge Wang recommended dismissal with prejudice for failure to prosecute under Rule 41(b) due to Plaintiff flouting multiple Court orders and Plaintiff's failure to appear for properly noticed depositions. *See generally* Report. Judge Wang thoroughly outlined the requirements of 28 U.S.C. § 636(b)(1) and Rule 72(b). Report at 10. Judge Wang stated that Mr. Kelly had fourteen (14) days from the date of service to file any objections, and that failure to do so would "result in a waiver of objections and will preclude appellate review." *Id.* Mr. Kelly filed no objections to the Report. *See* ECF. Thus, Mr. Kelly has waived any right to further appellate review.

This Court has reviewed the Report for clear error and finds none. Accordingly, Judge Wang's well-reasoned Report is adopted in its entirety as the opinion of the Court.

**CONCLUSION**

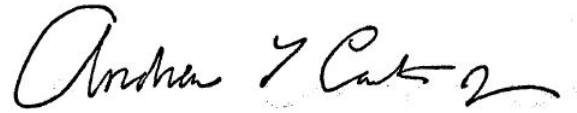
For the reasons herein, the Court adopts Judge Wang's Report in its entirety.

Accordingly, this action is dismissed with prejudice for failure to prosecute under Rule 41(b).

The Clerk of Court is directed to mail Plaintiff a copy of the instant order and close this case.

**SO ORDERED.**

**Dated: July 19, 2021**  
**New York, New York**

A handwritten signature in black ink, appearing to read "Andrew L. Carter, Jr.", written over a horizontal line.

**ANDREW L. CARTER, JR.**  
**United States District Judge**